IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 69 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DEVABHAI DHANABHAI BHARWAD

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 69 of 1997
MR PRASHANT G DESAI for Petitioner No. 1-20
MS DS PANDIT ASSTT GOVERNMENT PLEADER for Respondent No. 1-2
NONE APPEARED for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/09/2001

ORAL JUDGEMENT

#. Heard Mr.Prashant G. Desai, learned advocate appearing on behalf of the petitioners and Ms.D.S.Pandit, learned AGP appearing on behalf of the respondent Nos.1 & 2. Though RULE has been served on the respondent No.3, none appears for respondent No.3.

#. In this petition, initially this Court has issued notice and granted status quo by order dated 9th January, 1997. Thereafter, RULE has been issued by this Court on 5th February, 1997 and the ad-interim relief granted earlier is confirmed as the interim relief. Status quo, qua the possession and title of the land is ordered to be maintained by both the sides. On behalf of the respondent Nos.1 & 2, affidavit-in-reply dated 3rd November, 1999 has been filed, against which, rejoinder has been filed by the petitioner. Today, on behalf of the respondent No.2, additional affidavit has been filed which is taken on record and a copy thereof has been served to the other side by the petitioner.

#. The brief facts giving rise to the present petition are as under :-

According to the petitioners, they are illiterate persons and residing on the land bearing Survey No.1154 situate in village Harni, Vadodara and are doing the manual labour work like grazing the cows and buffaloes. On 28th April, 1972 the respondent No.3 purchased the property in question from Bai Dahi by a registered sale deed. The petitioners along with their families were living in the said land by constructing sheds and houses prior to the sale of the land on 28th April, 1972. According to the case of the petitioners, prior to the said sale deed, an understanding was arrived at between the petitioners and the respondent No.3 on 18th April, 1972 that that respondent No.3 will transfer the said land to the petitioners. That the petitioners filed Civil Suit being Civil Suit No.632/1984 in the Court of Civil Judge [S.D.], Vadodara and on 30th July, 1984 the said suit was decreed in favour of the petitioners. According to the petitioners, the Mamlatdar issued notice for demolishing the structures made on Survey No.1154 and against said order, some of the petitioners filed Appeal before the Deputy Collector. The Deputy Collector by his order dated 29th Sept., 1989 had allowed the appeal. The respondent No.3 filed Special Civil Application No.7463 / 1990 before this Court challenging order passed by the competent authority as well as the appellate authority. The order passed by the competent authority against the

respondent No.3 dated 15th October, 1983 under the provisions of the ULC Act and thereafter the appellate authority has passed order rejecting the appeal filed by the respondent No.3 on 27th February, 1986. Both these orders were challenged by the respondent No.3 before this Court in Special Civil Application No.7463 / 1990, wherein this Court [Coram : Mr.Justice A.N.Divecha] has passed order on 21st January, 1994 allowed the petition and set aside the orders passed by the Urban Land Tribunal, Ahmedabad on 27th February, 1986 passed in Appeal No.Baroda/184 / 85. This Court also remanded the matter back to the Urban Land Tribunal at Ahmedabad for restoration of Appeal No.Baroda/184 / 95 to its file and to give a fresh decision according to law. In the judgement and order passed by this Court, this Court has also observed that since the matter is very old one, it is desirable that the appellate authority gives top priority to its disposal preferable by 31st May, 1994. However, this Court has granted protection by way of interim relief in favour of the respondent No.3 to the effect that interim relief granted in this case is ordered to continue till the fate of the petitioners' appeal is finally decided. The appellate authority registered a new number being Appeal No.28 / 1994 which came to be decided by the appellate authority on 31st May, 1994. The appellate authority has come to the conclusion that the order passed by the competent authority dated 15th October, 1983 under the provisions of ULC Act, has been set aside and it was declared that the land is required to be considered to be an excess vacant land by deducting 1500 sq.mtrs out of total land of 3541 sq.mtrs and the Tribunal directed the competent authority to issue fresh statement declaring 2041 sq.mtrs as excess land from Survey No.1154. Thereafter, pursuant to the order of the Urban Land Tribunal dated 31st May, 1994, possession of the land 33792 sq.mtrs was required to be given to the original landholder and the remaining land belong to Survey No.1154 admeasuring 2041 sq.mtrs declared as excess land, is required to be taken possession pursuant to the orders passed by the Tribunal dated 31st May, 1994. This order has been passed by the competent authority on 12th December, 1994 with a direction to the Mamlatdar to carry out this change and to implement the same. However, according to the petitioners, they are residing on the land in question since 1968. It is also the case of the petitioners that they have approached the civil court by way of civil suit No.632 / 1984 claiming possession on the basis of adverse possession even before 12 years from 1984. However, in the Civil Proceedings, the competent authority was not party. But the Civil Court has passed the decree in

favour of the petitioners by deciding the issues in affirmative viz. [1] Whether plaintiff proved his case, [2] whether plaintiffs are entitled for the declaration as prayed for [3] whether plaintiffs are entitled to any other relief. Thus, all three major issues have been held in affirmative by the civil court and ultimately, the Third Joint Civil Judge, Baroda has passed order that the suit is decreed with cost and further declared that the plaintiffs are owners by adverse possession of the suit property as mentioned in the plaint. In the order passed on 30th July, 1994, the Civil Court has considered that fact that the property as mentioned in the plaint i.e. Survey No.1154 which initially belongs to Bai Dahi, widow of Shankarbhai Desai. This property has been sold to the respondent No.3 by registered sale deed dated 28th April, 1972. In above set of facts and circumstances, the order passed by the appellant authority - tribunal in pursuance of the order passed by this Court in Special Civil Application No.7463 / 1990 dated 21st January, 1994 declaring excess land 2041 sq.mtrs by order dated 31st May, 1994, has been challenged by the petitioner in the present petition.

#. Learned Advocate Mr.Prashant G. Desai appearing on behalf of the petitioners has submitted that the order passed by the Tribunal under the provisions of the ULC Act dated 31st May, 1994, wherein the original orders passed by the competent authority on 15th October, 1983 was set aside declaring that now the Survey No.1154 is required to be added in the holding of the original land holder and hence, out of the total land 3541 sq.mtrs, by deducting 1500 sq.mtrs per unit, land admeasuring 2041 sq.mtrs was declared as excess land in Survey No.1154. Mr.Desai, learned advocate has submitted that thereafter further proceedings ought to have been carried out by the competent authority, but in fact, no such proceedings have been carried out and ultimately the land remained in possession of the petitioners and the possession of the land in question which was declared as excess land by the appellate authority - tribunal, the possession is not taken over by the State Government or even by the Competent Authority subsequent to 31st May, 1994. In the present petition, the petitioner have made clear averments that the petitioners are having possession of the disputed land in question and they are residing with families since 1968. Therefore, learned advocate Mr.Desai has submitted that pursuant to the orders passed by the tribunal on 31st May, 1994, no further process has been carried out by the respondent authority and so called proceedings of taking over the possession pursuant to the order dated 15th October, 1983 has no legal effect

because it is the duty of the respondent authority to exercise the powers after orders passed by the tribunal and accordingly, the authority ought to have taken possession pursuant to the order passed by the tribunal on 31st May, 1994. Therefore, learned advocate Mr.Desai has further submitted that in light of above facts, when the possession is not taken over by the State Government or the competent authority from the petitioners, in that case, considering the provisions of the Repeal Act, now the competent authority is not entitled to take back possession of the said excess land which has been declared by the appellate authority - tribunal by order dated 31st May, 1994. It is also necessary to note the submission of the learned advocate Mr.Desai that in light of the affidavit-in-reply of the respondents, the averments made in para-11 [19] that the possession of the land in question has been recovered by the State Government on 17th April, 1985. However, the State Government has also placed on record Panchnama showing that the possession of the dispute land in question has been taken over by the State Government. Mr.P.G.Desai, learned advocate has submitted that the suit filed by the petitioners in the year 1984 on the basis of the fact that they were in possession of the said land for more than 12 years and thereupon the suit was decreed and it was declared by the Civil Judge [S.D.] that the petitioners are the owners by adverse possession of the suit property, therefore, according to Mr.Desai, even if the Panchnama produced by the respondent authorities showing that the possession of the disputed land in question has been taken over by the competent authority, even then, no notice under Section 10[5] has been served to the present petitioner who were admittedly occupiers at the relevant time. Therefore, according to submission of Mr.Desai, learned advocate, the so called possession alleged to have been claimed by the respondent authority is nothing but mere paper possession, shown to have taken by the State Government but the reality is that the petitioners having possession of the land in question. He also submitted that during the pendency of the proceedings before the Civil Court from 1984 to 1994, no possession has been taken over by the State Government from the petitioners who were occupier of the land in question. He also further submitted that Panchnama of taking over of the possession by the competent authority pursuant to the order dated 15th October, 1983, have no legal effect in light of the fact that the appellate authority has set aside the order dated 15th October, 1983 by order dated 31st May, 1994. Therefore, Mr.Desai has submitted that the order passed by the appellate authority - tribunal dated 31st May, 1994 declaring

excess land admeasuring 2041 sq.mtrs is required to be set aside as the possession of the land in question is with the petitioners.

#. Learned AGP Ms.D.S.Pandit appearing on behalf of the respondent authorities has submitted that two affidavit-in-reply have been filed by the competent authority. She relied upon aforesaid two affidavits filed by the competent authority and pointed out averments made by the deponent in para-10 to the effect that the case of the petitioners that the lands in question are held jointly by them as co-owners and have filed the present petition seeking a direction against the respondent No.1 and 2 not to treat the lands in question as vacant land under the Urban Land [Ceiling and Regulation] Act, 1976 and further direction against the respondents Nos.1 & 2 to treat the order dated 31st May, 1994 as cancelled. However, she also relied upon para-11[2] of the affidavit and pointed out that as per the agreement made in the Court of the Civil Judge [J.D.] the lands of Moje Harni bearing Revenue Survey No.1154 is obtained by the respondent No.3 - the land holder and necessary entry No.1312 in the village record in respect of the lands Survey No.1154 was purchased by the respondent No.3 on 28th April, 1972 by registered sale deed. Therefore, lands of Survey No.1154 admeasuring 3541 sq.mtrs are running in the name of the respondent No.3 Shri Bharwad Becharbhai Revabhai. That there are constructions upon this land. However, the said constructions are unauthorised made by the other persons and there is no provisions under the Urban Land [Ceiling and Regulation] Act, 1976, not to consider such constructions in the holding. The deponent of the affidavit further pointed that the competent authority has held that the respondent No.3 is entitled to retain 1500 sq.mtrs of the land and 2041 sq.mtrs has been declared as excess vacant land and the aforesaid order was made in accordance with law and revenue records shows that the respondent No.3 - the land holder as the owner of the land in question. It is also pointed out by the deponent that merely because the petitioners are residing over the said land, the same do not become of their ownership. It is also pointed out that no entry in respect of the alleged agreement dated 18th April, 1972 in the village record and further no evidence has been produced by the petitioners of having possession of the excess land in question. She also pointed out that the petitioners are unauthorisedly residing upon the said lands and merely because the petitioners have made application before the Taluka Development Officer for obtaining loan for purchasing the cattle, they do not

become the legal landholders. She also pointed out that according to the say of the petitioners that they are residing over the lands in question since, 1968, however, no evidence has been produced by the petitioners and no revenue record has been placed on record which discloses the fact that the lands are running in the name of the petitioners. She also pointed out that the date on which the Act came into force, the lands in question were standing in the name of the original land holder in the village revenue record and therefore, the orders passed by the competent authority are just and legal. She also pointed out that during the pendency of the appeal before the appellate authority challenging the original orders dated 15th October, 1983 by the respondent No.3, in the meantime, Notifications under Section 10[1] and 10[3] of the Act were issued and published in the Government Gazette and notice under Section 10[5] of the Act were issued to the landholder and ultimately possession of the lands in question was taken over on 17th April, 1985. Thereafter, the Urban Land Tribunal by order dated 27th June, 1986 dismissed the appeal preferred by the respondent No.3. However, against the said order of dismissal of the appeal, was challenged by the respondent No.3 before this Court by way of Special Civil Application NO.7463 / 1990. She also pointed out that on the date of commencement of the Act, the petitioners were having no legal right over the said land and therefore, she submitted that pursuant to the order passed by the competent authority on 15th October, 1983, further proceedings were taken and possession of the lands in question has been taken over by the respondent authority on 17th April, 1985 in presence of the Panchas and even the compensation under Section 11 of the Act was also paid by the authority on 13th April, 1986. She also pointed out that pursuant to the order passed by the tribunal on 31st May, 1994, possession of the land 33792 sq.mtrs was required to be handed over back to the landholder, however, upon perusal of the record, there is nothing to show that same has been handed over back to the original land holder. She also submitted that looking to the facts, the land in question in the present petition are concerned, the possession of the same has been taken over on 17th April, 1985 and thereafter further order has been passed by the competent authority on 12th December, 1994. Therefore, in view of the Repeal Act, when the possession of the lands in question is already taken over, the present petition is required to be dismissed.

#. Ms.Pandit, learned AGP has also submitted that additional affidavit in reply on behalf of the respondent

No.2 - the Competent Authority and Deputy Collector has been filed and accordingly, during the proceedings before the Civil Judge [S.D.], Vadodara filed by the petitioners during the year 1984, the competent authority was not the party and therefore, the decision is not binding to the competent authority. However, along with this additional affidavit in reply, the respondent has produced on record the order passed by the competent authority dated 15th October, 1983, a copy of the Panchnama and copy of the village Form NO. VII & XII as well as necessary entry made in the revenue record and order passed by the appellate authority on 31st May, 1994. The copy of the order passed by the competent authority on 12th December, 1994 and a copy of the judgement of the civil court as well as revenue record of village form No. 7 / 12 in respect of the land in question, wherein the name of the Government is shown and thus, all the aforesaid documents are placed on record by the respondent authority.

#. I have considered the submissions of the learned advocates for the parties. It is necessary to note that one fact remains that vide order passed by this Court in Special Civil Application No.7463 / 1990 wherein the order of the appellate authority dated 27th February, 1986 passed in Appeal No.Baroda/185-85 challenged by the respondent No.3, has been set aside on 21st January, 1994 along with the order passed by the Tribunal dated 27th February, 1986 and accordingly, the matter has been remanded back to the tribunal for fresh decision keeping in mind the observations made in the said judgment and interim relief granted in the year 1990 in that petition. However, the said order granting interim relief was ordered to be continued till the appellate authority takes decision in the remanded matter. Therefore, it is obvious that the orders passed by the appellate authority on 27th February, 1986 was challenged by the respondent No.3 before this Court in Special Civil Application No.7463/ 90, wherein, interim relief was granted which remained continued upto 31st May, 1994. However, after the remand of the matter to the tribunal, the tribunal has passed the order on 31st May, 1994 setting aside the order passed by the competent authority dated 15th October, 1983 and accordingly the land belong to Survey No.1154 has been declared in holding of the original land holder and thus, after deducting the land of 1500 sq.mtrs per unit, the land 2041 sq.mtrs has been declared as excess land out total land of 3541 sq.mtrs. However, pursuant to the order passed by the tribunal dated 31st May, 1994, the possession is claimed to have been taken over by the competent authority as per the affidavit, on 17th April, 1985. Therefore, the possession which was

taken over on the basis of the order dated 15th October, 1983, the said order has been set aside by the tribunal by order dated 31st May, 1994. Thus, once the order which was relied upon by the competent authority in taking over the possession, has been set aside by the tribunal on 31st May, 1994 declaring excess land in respect of the Survey No.1154 and further adding that land in the holding of the original land holder, then fresh process is required to be carried out by the competent authority. However, considering the two affidavit in replies filed by the competent authority subsequent to the orders passed by the tribunal dated 31st May, 1994, there was no fresh exercise seems to have been carried out or no further steps seem to have been taken by the competent authority for taking over the possession of the land in question from the petitioners or from the original land holder. However, this Court has put a specific query to the learned AGP Ms.Pandit that whether any document on record shows that subsequent to the order passed by the tribunal on 31st May, 1994, the possession of the land in question has been taken over either from the petitioners or from the original land holders by the competent authority or not ? While responding this query put by this Court, learned AGP Ms.Pandit is not able to respond the query put by this Court. Moreover, one important aspect which is required to be noted that considering the order passed by the competent authority dated 15th October, 1983 was quashed and set aside and fresh order has been passed by the tribunal. However, fresh process which are required to be undertaken by the competent authority for taking possession of the land in question, are not taken nor any step has been taken, therefore, Panchnama which has been prepared by the competent authority or authorised person on 17th April, 1985 have no legal effect because that order has been set aside by the appellate authority tribunal and it is not case of the respondent authority that possession of the land in question has been taken over by the competent authority thereafter. It is also necessary to note that the civil proceedings which initiated by the present petitioners by filing Regular Civil Suit No.632/ 1984 against the respondent No.3. However, in the said civil proceedings, it was established by the petitioners that they were in possession of the land in question even prior to 12 years from 1984. This fact has been proved by the petitioners before the Civil Court and in the result, the Civil Court has decreed the suit and declared that the plaintiffs are owners by adverse possession of the suit property as mentioned in the plaint. However, this judgment is pronounced by the Civil Court on 30th July, 1994.

#. It is also necessary to note that though Panchnama has been placed on record by the respondent authority, wherein it is shown that the possession of the land in question has been taken over by the authority on 17th April, 1985. But considering the two affidavit-in-reply filed by the competent authority, the competent authority in terms stated that in the reply in para-11.3 that "the petitioners are unauthorisedly residing upon the said lands". It is further averred in para-11.5 to the effect that "I submit that it is the say of the petitioners that they are residing over the lands in question since 1968, however, there is no evidence to show that the said lands are running in the names of the petitioners in the Revenue Record. In short, the effect of the affidavit-in-reply filed by the competent authority himself has agreed to the effect that the petitioners are residing upon the land in question though the land in question is running in the name of the respondent No.3 and the competent authority has considered the holding of the respondent No.3 and passed the order. However, it is also pertinent to note that looking to the affidavit in reply, the possession of the land in question has been taken over by the authority in pursuance of the orders passed by the competent authority on 15th October, 1983. However, the aforesaid order has been quashed and set aside by the tribunal by order dated 31st May, 1994. Therefore, according to my opinion, the possession which was taken over by the authority on 17th April, 1985 on the basis of the order of the competent authority dated 15th October, 1983, the said order has been ultimately set aside on 31st May, 1994. Therefore, such possession, in the view of this court, will not have any legal effect. Furthermore, looking to the entire record and considering the averments of the respective sides so also the orders passed by the Civil Court, it has come on record that the petitioners are having possession of the land in question. Not only that but the petitioners before Civil Court are declared as the owners of the land in question by Civil Court on the basis of adverse possession, in the civil proceedings filed by the petitioners in the year 1984. Moreover, no steps have been taken by the competent authority subsequent to the order passed by the Tribunal on date 31st May, 1994 and therefore, the order which has been passed by the tribunal on 31st May, 1994, in my opinion, deserves to be quashed and set aside and consequently, the land in question which has been declared as the excess land by order passed by the Tribunal vide order dated 31st May, 1994 will not stand as the excess land as the same has been occupied in possession of the petitioners.

#. In view of above discussion, the present petition succeeds and the same is allowed accordingly. The order passed by the appellate authority - tribunal dated 31st May, 1994 declaring the land admeasuring 2041 sq.mtrs belong to Survey No.1154, as excess land is hereby quashed and set aside. imultaneously, the order dated 15th October, 1983 passed by the Competent Authority so also the order dated 12th December, 1994 passed by the Competent Authority are also hereby quashed and set aside. Therefore, the land in question admeasuring 2041 sq.mtrs belongs to Survey No.1154 is declared to be not vested in the Government. When the order passed by the appellate authority tribunal dated 31st May, 1994 declaring the land admeasuring 2041 sq.mtrs belong to Survey No.1154 as excess land, so also the orders of the competent authority dated 15th October, 1983 and 12th December, 1994 are quashed and set aside as stated before, consequently, it is declared that the possession of the land in question was with the petitioners and now remains with the petitioners. Resultantly, in view of the provisions of the Repeal Act, 1999, the benefits of the Repeal Act will be, obviously now, in favour of the petitioners.

In the result, present petition is allowed and Rule is made absolute accordingly. No order as to costs.

Direct Service is Permitted.

Date : 27-9-2001 [H.K.Rathod, J.]

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